

REMARKS

This response is submitted in response to the Office action mailed on September 23, 2005 with shortened statutory response period ending on October 23, 2005, which fell on a Sunday. Therefore, this response is timely filed on Monday, October 24, 2005. Claims 1-20 are pending in the present application. Claims 1-4 and 12-18 have been provisionally withdrawn as a result of a restriction requirement. Claim 1 has been amended to delete the phrase "An isolated or synthesized" thereby clarifying that the invention is directed to a cocoa polypeptide identified by SEQ ID NO:1, SEQ ID NO:2, or a fragment thereof comprising SEQ ID NO:3 or SEQ ID NO:4, it is believed. Claims 12 and 14 have been amended to replace the phrase, "isolating, synthesizing or producing" with the word "obtaining." Claim 5 has been amended to place it in independent form, consistent with the provisional selection of Group A.

The Office action requires Applicants to restrict the application to one of the following Groups:

- I. Claims 1-4 and 12-18, drawn to an isolated or synthesized cocoa polypeptide identified by SEQ ID NO:1, SEQ ID NO:2, or a fragment thereof comprising SEQ ID NO:3 or SEQ ID NO:4, and a method of producing cocoa or chocolate flavor comprising isolating, synthesizing or producing said polypeptide, and to said method further comprising reacting the peptide with a reducing sugar, classified in class 530, subclass 324, for example.
- II. Claims 5-11 and 19-20, drawn to an isolated or synthesized nucleotide sequence encoding a polypeptide identified by SEQ ID NO:1, SEQ ID NO:2, or a fragment thereof comprising SEQ ID NO:3 or SEQ ID NO:4, and a vector containing said sequence, and a cell containing said sequence or said vector, and a plant containing said cell, and a method of producing cocoa beans with increased cocoa flavor peptides, the method comprising transforming a cocoa cell with said sequence and generating at least one cocoa plant from the transformed cell, classified in class 800, subclass 278, for example.

Applicants provisionally elect, with traverse, Claims 5-11 and 19-20 of Group II. Applicants reserve the right to file a divisional application to the non-elected claims and subject matter. The Applicants respectfully request that this restriction requirement be reconsidered and withdrawn for reasons that follow.

With respect to Groups I and II, the Office action requires Applicants to further restrict the application to one of the following Groups:

- A. SEQ ID NOs: 1 and 3, or
- B. SEQ ID NOs: 2 and 4

Applicants provisionally elect, with traverse, SEQ ID NOs: 1 and 3 of Group A. Applicants reserve the right to file a divisional application to the non-elected subject matter. The Applicants respectfully request that this restriction requirement be reconsidered and withdrawn for reasons that follow.

Applicants respectfully request that the basis for the present restriction requirements be reconsidered and withdrawn. According to the M.P.E.P., if the search of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. 803 There must be a serious burden on the Examiner if restriction is required. Such is simply not the case here with respect to the restriction of Groups A and B because examination of Group B would only require a search of a single sequence and a second sequence which is a fragment of that sequence and a search of Group A would require a search of only a single sequence and a second sequence which is a fragment of that sequence. Applicants submit that searching the two sequences and their two fragments does not rise to the level of a serious burden as required to support the present requirement between Groups A and B. A computer could be used to complete such a search in a relatively few minutes.

With respect to the requirement for restriction between Groups I and II, the Applicants note that the phrase “[a]n isolated or synthesized” has been removed from Claim 1 and the phrase “isolating, synthesizing or producing” has been replaced with “obtaining” in Claims 12 and 14. Therefore a search for techniques of making and purifying peptides, as suggested by the Office action, is not needed. Only the identified sequences themselves need be searched. The added burden of searching the polypeptide sequences of SEQ ID NO: 1 and a fragment within it, SEQ ID NO: 3; and the polypeptide sequence of SEQ ID NO: 2 and a fragment within it, SEQ ID NO: 4, only presents a small additional burden over the search already required for the selected Group II. Such a search would not rise to the level of a serious burden, as required by the M.P.E.P. For the reasons set forth above the Applicants request that the restriction

requirements in this case be reconsidered and withdrawn. Applicants respectfully request an early and favorable examination on the merits regarding the above-referenced patent application.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
Cust. No. 29157

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